

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

MISSOURI FEDERATION OF TEACHERS,)
AFT AFL-CIO,)

Petitioner,)

v.)

DEPARTMENT OF ELEMENTARY AND)
SECONDARY EDUCATION, DIVISION OF)
VOCATIONAL REHABILITATION,)

Respondent.)

Public Case No. R 89-017

JURISDICTIONAL STATEMENT

This case appears before the State Board of Mediation upon the filing by the Missouri Federation of Teachers (Federation) of a petition for certification as public employee representative of certain employees of the Division of Vocational Rehabilitation of the Department of Elementary and Secondary Education (Department). The question to be decided is whether a bargaining unit consisting only of professional employees within one of the Department's five divisions, the Division of Vocational Rehabilitation, is appropriate in this case. This Board concludes that a larger, department-wide bargaining unit is the appropriate one.

A hearing was held on June 19, 1989, in Jefferson City, Missouri, at which representatives of the Federation and the Department were present. This case was heard by State Board of Mediation Chairman Mary L. Gant, employee member David Langston, and employer member Milton Talent. The State Board of Mediation is authorized to hear and decide issues regarding appropriate bargaining units pursuant to Section 105.525, RSMo 1986.

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence presented, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

The ultimate authority in the Department of Elementary and Secondary Education is the State Board of Education. The State Board sets public policy for the Department. The Commissioner of Education, who serves at the pleasure of the State Board, is responsible for implementing the State Board's policy decisions. The Department is divided into six divisions: Administration, Instruction, Vocational and Adult Education, Special Education, Urban and Teacher Education, and Vocational Rehabilitation.

Personnel decisions for the entire Department are made by the Commissioner of Education, with the approval of the State Board of Education. The personnel section, within the Department's Division of Administration, provides assistance to the Commissioner and the State Board on personnel matters. The personnel section is responsible for such things as the development and distribution of personnel policies and procedures and fringe benefit administration. This section also prepares the General Manual on Personnel Policies for the Department, which includes policies on hiring, firing, transfers, promotions, work hours, leaves, salary, evaluations, disciplinary action, and grievances. The Manual, which is approved by the State Board, applies generally to all employees of the Department except for school-term employees of certain schools for handicapped persons.

The Department's grievance procedure is uniform throughout all divisions. The last two steps of this process allows review of the grievance by the Commissioner of Education and then by the State Board of Education. A common salary grid is followed by the Department for all its professional employees, although, in some instances under this salary grid, salaries for positions in the Division of Vocational Rehabilitation can be

less than salaries in other divisions which have less stringent educational requirements. Fringe benefits provided to employees by the Department are also uniform throughout the Department. Most fringe benefits received by the Department's employees are common to all state employees, but in one instance, tax sheltered annuities, only employees of the Department are eligible. A common performance appraisal system, developed with the participation of a committee of employees from various divisions and positions, is employed to evaluate all professional employees of the Department.

The Commissioner of Education, with the approval of the State Board of Education, has the power to reassign Department functions from one division to another, including personnel associated with those functions. As a specific example of this power, the Commissioner, with the State Board's approval, recently reassigned the Audio Visual Services section from the Division of Special Education to the Division of Instruction. The Division of Vocational Rehabilitation uses different procedure manuals than do the Department's other divisions. Professional employees in the Division of Vocational Rehabilitation have little or no contact with professional employees of the other divisions. Movement of professional personnel between the Division of Vocational Rehabilitation and the other divisions is uncommon. Offices for Division of Vocational Rehabilitation personnel are generally located in Missouri's larger cities. These offices are not located in the same buildings as are offices for the personnel of the Department's other divisions, except for the offices in Jefferson City, where the same building is shared, but the offices are physically separate.

The skills required of professional employees of the Division of Vocational Rehabilitation and the duties they perform within their division are unique from the education and skills required of and duties performed by those in positions in the Department's other divisions. However, the Division of Vocational Rehabilitation itself includes several different positions within two sections, vocational rehabilitation and disability determination. There is, in general, no greater or lesser degree of similarity of

education, skills, and duties to be found when comparing the various positions included within the Division of Vocational Rehabilitation with one another than there is when comparing the positions within that division with the positions in the other divisions.

Funding for the Divisions of Vocational Rehabilitation and of Special Education is derived primarily from federal money. Significant amounts of money from both the state and federal governments provide the funding for the Division of Instruction. The Department's remaining divisions are funded chiefly from state funds.

At the time of the hearing in this case, only employees from the Division of Vocational Rehabilitation were involved in the efforts to establish, with the Federation's assistance, a bargaining unit within the Department. Professional employees in the Department's other division had expressed no interest in this endeavor.

CONCLUSIONS OF LAW

The issue presented in this case is whether a bargaining unit including only professional employees of the Department's Division of Vocational Rehabilitation is appropriate. The Federation contends that such a unit is appropriate. The Department takes the opposite position. As an alternative to a division-wide unit, the Department suggests, without conceding that the requisite showing of interest has been made, that a larger department-wide unit would be an appropriate bargaining unit. The parties have agreed on the positions which should be included in a division-wide unit, if such a unit is determined appropriate, and also on the positions which should be included in a department-wide unit, if this larger unit is determined appropriate.

An appropriate bargaining unit is defined by Section 105.500 (1) RSMo 1978 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest." However, the Board has

consistently looked to the following factors in determining whether employees share such a community of interest.

1. Similarity in scale or manner of determining earnings.
2. Similarity in employment benefits, hours of work and other terms and conditions of employment.
3. Similarity in the kind of work performed.
4. Similarity in the qualifications, skills and training of the employees.
5. Frequency of contact or interchange among the employees.
6. Geographic proximity.
7. Continuity or integration of production processes.
8. Common supervision and determination of labor-relations policy.
9. Relationship to the administrative organization of the employer.
10. History of collective bargaining.
11. Extent of union organization.

See AFSCME, Missouri State Council 72 v. Department of Corrections and Human Resources, Case No. 83-002, at pp. 8-9 (SBM 1984). Additionally, in making appropriate bargaining unit determinations, the Board must guard against over-fragmentation of bargaining units. Service Employees Int'l. Union, Southwestern Joint Council No. 29 v. Department of Labor and Indus. Rels., Division of Employment Sec., Case No. 84-111, at pp. 9-10 (SBM 1984). The Board is reluctant to permit fragmentation of a bargaining unit unless the employees in question have distinct economic interests which cannot be fairly represented by a broader, more comprehensive unit. See Service Employees Int'l. Union, Local No. 50 v. City of Springfield, Case No. 79-013, at p. 8 (SBM 1979).

Those employed in positions in the Division of Vocational Rehabilitation have skills and perform duties which are unique in comparison to the skills and duties required of employees in other divisions of the Department. By the same token,

however, many positions included within the Division of Vocational Rehabilitation also share little in common with each other with respect to skills and duties. Therefore, the uniqueness of positions within the Division of Vocational Rehabilitation provides no basis for a division-wide unit over a department-wide unit.

Further, the general lack of contact and interchange between employees of the Division of Vocational Rehabilitation and employees of other divisions of the Department does not by itself mandate certification of a division-wide unit. Neither does the physical and geographic separation of the offices out of which they operate. See Service Employees Int'l. Union, Local No. 50 v. City of Springfield, Case No. 79-013, at pp. 5-6 (SBM 1979). Certification of groups of employees as separate bargaining units simply because the groups lack contact and interchange with other employees or because the groups do not work in geographic proximity to other employees would result in a proliferation of bargaining units. This proliferation would work against the public interest in that bargaining between an employer and its multiple bargaining units would be unmanageable. See id.

The Division of Vocational Rehabilitation is funded primarily from federal funds. However, given that the Division of Special Education is also funded primarily with federal funds and that the Division of Instruction receives significant amounts of federal funding, the funding of the Division of Vocational Rehabilitation by the federal government provides no particular justification for a division-wide unit.

The Board also weighs the extent of union organization in this case. Employees of the Division of Vocational Rehabilitation have initiated and followed through in efforts to establish a bargaining unit without any indications of interest or support from employees of other divisions. However, there appears to have been no attempts by either Vocational Rehabilitation employees or the Federation to recruit employees from the other divisions to join their organizational drive.

Turning to factors which favor the certification of a department-wide unit, this Board notes that policies and procedures respecting labor relations in the Department are centrally established by the Commissioner of Education with the approval of the State Board of Education, for the Department as a whole. The General Manual on Personnel Policies, prepared by the Division of Administration's personnel section and approved by the State Board, applies to all employees of the Department (with minor exceptions), regardless of the division in which they work. This manual provides all the Department's employees with similar employment benefits, hours of work, and other conditions of employment. These employees are subject to the same grievance procedure and performance appraisal system, are paid pursuant to a common salary grid, and receive uniform fringe benefits, including tax sheltered annuities for which only Department employees are eligible.

The State Board of Education and the Commissioner of Education, within constitutional and statutory bounds, ultimately control the Department's operations in all respects. This centralization of authority in the Department indicates that all departmental employees share a common relationship to the Department's administrative organization.

The power of the Commissioner of Education and the State Board of Education to reassign Department functions from one division to another could result in divisional bargaining units becoming obsolete in a relatively short time. Because of this reassignment power, the individual divisions lack the stability and cohesiveness generally associated with divisional units.

Upon consideration of the circumstances discussed above, this Board concludes that a department-wide unit is appropriate in this case.

There are some distinctions between the employees of the Division of Vocational Rehabilitation and the employees of the Department's other divisions. However, the common working conditions and benefits applicable to all these employees, the

centralization of authority within the Department, and the power of the Commissioner of Education and the State Board of Education to move Department functions from one division to another create a community of interest among all the professional employees of the Department.

Also important to the Board's conclusion is its reluctance to permit fragmentation of a bargaining unit unless the employees in question cannot be fairly represented by a broader, more comprehensive unit. Given the community of interest among all the Department's employees, they can and will be fairly represented by a department-wide unit.

Due to the Federation's consistent advocacy of a division-wide bargaining unit, it has not made, on a department-wide basis, the requisite showing of interest for a representation election. Not wishing to penalize the Federation for its consistent stand, the Board grants it thirty (30) days from the date of this decision to establish the requisite showing of interest within the unit here determined to be appropriate.

DECISION

It is the decision of the State Board of Mediation that the appropriate unit is as follows: a unit of professional employees within the Department of Elementary and Secondary Education, as listed on Schedule A, excluding supervisory, managerial, confidential, and all other employees.

DIRECTION OF ELECTION

As the unit determined to be appropriate is larger than the one sought by the Federation, the Federation shall have thirty (30) days from the date of this decision to establish the requisite showing of interest within the appropriate unit. If such showing of interest is not made, the Federation's petition will be dismissed without prejudice.

If the requisite showing of interest is made, an election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or her designated

representative, among the employees in the unit found appropriate. This election shall be conducted as early as possible, but not later than thirty (30) days from the date the showing of interest is made. The exact time and place will be set forth in a notice of election to be issued if the requisite showing of interest is made, subject to the Board's rule and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date the showing of interest is made, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to be represented for the purposes of exclusive recognition by the American Federation of Teachers.

It is hereby ordered that the Department shall submit to the Chairman of the State Board of Mediation, as well as to the Federation, within seven days from the date the showing of interest is made, an alphabetical list of names and addresses of employees in the unit determined above to be appropriate who were employed during the payroll period immediately preceding the date the showing of interest is made.

Signed this 29th day of September, 1989.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant
Mary L. Gant, Chairman

/s/ David L. Langston
David L. Langston, Employee Member

/s/ Milton O. Talent
Milton O. Talent, Employer Member

SCHEDULE A

<u>Position</u>	<u>Section</u>
Appeals Counselor	Disability Determinations
Counselor	Vocational Rehabilitation
Counselor	Disability Determinations
Inquiry Specialist	Disability Determinations
Program Appraisal Specialist	Disability Determinations
Senior Counselor	Vocational Rehabilitation
Senior Counselor	Disability Determinations
Senior Counselor-Evaluator	Vocational Rehabilitation
Asst. Supervisor of Programming	State Schools for Severely Hand.
Microcomputer Specialist	Data Processing
Programmer I	Data Processing
Programmer/Analyst II	Data Processing
Systems Analyst II	Data Processing
Supervisor	Leadership Academy
Supervisor	Accounting & Procurement
Supervisor	Pupil Transportation
Supv. Desegregation Transportation	Pupil Transportation
Supervisor	School Finance
Supervisor	School Finance (Deseg. Programs)
Supervisor	School Food Services
Supervisor/Food Distribution	School Food Services
Supervisor	Gifted Education
Health Education Supervisor	Health Education
Supervisor	Early Childhood Education
Supervisor	Testing & Assessment
Supervisor	Federal Programs
Supervisor of Projects	Compensatory Education Programs
	Chapter 1, ECIA
Supervisor	Supervision of Instruction
Supervisor	Instructional Improvement & Resources
Supervisor	Special State Instructional Programs
Supervisor	Agricultural Education
Supervisor	Adult Education
Supervisor	Vocational Planning & Evaluation
Supervisor	Special Vocational Services
Supervisor	Business & Office Education
Supervisor	Marketing & Cooperative Ed.
Supervisor	Home Economics Education
Supervisor	Industrial Education
Supervisor, Industrial Training	Industrial Education
Supervisor	Health Occupations/Industrial Education
Supervisor	Employment Training

Supervisor
 Supervisor
 Supervisor
 State Deaf-Blind Project (Supv.)
 Supervisor
 Early Childhood Supervisor
 Supervisor, Deaf Education
 Supervisor - Maintenance

 Supervisor of Pupil Placement

 Supervisor - Related Services

 Supervisor - Technical Field

 Supervisor
 Supervisor

 Supv. of Prof. Development Prog.
 Supervisor
 Supervisor, Management Info.

Voc. Special Needs- Guidance
 Veteran's Education
 Vocational Finance
 Missouri School for the Blind
 Special Education
 Special Education
 Spec. Ed./Mo. School for Deaf
 State School for Severely
 Handicapped & Building Serv.
 State School for Severely
 Handicapped
 State School for Severely
 Handicapped
 Extended Employment Sheltered
 Workshops
 Div. of Urban & Teacher Ed.
 Technical Assistance Unit -
 School Desegregation
 Teacher Education
 Teacher Certification
 Disability Determinations